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SENATE BILL

No. 497

Introduced by Senator Simitian

(Principal coauthors: Assembly Members Nation and Wolk)

February 18, 2005

An act to amend Sections 71204.7, 71207, 71211, 71216, 71271, 72421, 72423, and 72440 of, and to add Sections 71205.3 and 71211.5 to, the Public Resources Code, and to repeal Section 44008 of the Revenue and Taxation Code, relating to vessels, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 497, as amended, Simitian. Vessels: releases.

(1) The existing Marine Invasive Species Act (the act), among other things, requires the master, owner, operator, or person in charge of a vessel, as defined, carrying or capable of carrying ballast water, as defined, that operates in the waters of the state to take specified actions to minimize the uptake and release of nonindigenous species, as defined. The act requires the State Lands Commission, on or before January 31, 2006, to submit to the Legislature and make available to

the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state or into waters that may impact waters of the state.

This bill would require the commission, on or before January 1, 2008, to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement certain interim and final performance standards for the discharge of ballast water, as specified. The bill would require the commission to disseminate, to the public, specified information regarding experimental ballast water treatment systems.

The bill would require the commission, prepare and submit to the Legislature a review of the efficacy of currently available technologies for ballast water treatment systems, as specified.

(2) The act authorizes the commission, if an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves the application, to subsequently deem the system to be in compliance with any future treatment standard adopted, as specified.

The bill would instead require the commission to deem the system in compliance with any future treatment standard adopted, for a period not to exceed 5 years from the date of the application of interim performance standards pursuant to the bill, and the bill would limit that authority to systems approved by the commission on or before January 1, 2008.

(3) The act prohibits a state agency, board, commission, or department, prior to January 1, 2010, from imposing a requirement pertaining to the discharge or release of ballast water and other vectors of nonindigenous species from a vessel regulated pursuant to the act, that is different from the requirements of the act, unless that action is mandated by federal law.

The bill, instead, would prohibit that action by one of those entities, prior to that date, unless the action is made pursuant to federal law.

(4) The act requires the Department of Fish and Game, in consultation with the commission and the United States Coast Guard, to collect data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species in specified waters. The act requires the department to make the inventory and accompanying analysis available to the public on or before January 1, 2007, and to provide the public an update of that inventory no later

than July 1, 2008. The act requires the department, in consultation with the commission and the United States Coast Guard, to assess the effectiveness of the ballast water controls implemented pursuant to the act, as specified, and to submit a report presenting the assessment to the Legislature and the public on or before January 1, 2009.

The bill, instead of requiring the department to update the inventory no later than July 1, 2008, would require the department to annually provide the public an update of the inventory. The bill, in addition to the assessment report required on or before January 1, 2009, would require the department to present an assessment report to the Legislature and the public every 3 years after that date. The bill would require the department, additionally, to convene a scientific review panel to evaluate the effectiveness of, and make recommendations for, specified biological monitoring and research activities. The bill would authorize the department, upon appropriation, to use money from the Marine Invasive Species Control Fund for that purpose.

(5) The act provides that a person who intentionally or negligently fails to comply with the act may be liable for an administrative civil penalty not to exceed \$5,000 for each violation. The act provides that a person who fails to comply with specified reporting requirements may be liable for an administrative civil penalty not to exceed \$500 per violation. The act also provides that a person who, knowingly and with intent to deceive, falsifies a ballast water control report form, or, knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by the act, may be liable for an administrative civil penalty not to exceed \$5,000 per violation. A specified violation of the act is a crime. Existing law repeals the act as of January 1, 2010.

The bill would increase the amount of those administrative civil penalties to not more than \$27,500 per violation.

The bill would delete the repeal of the act and make conforming changes. Because extending the act indefinitely would change the definition of a crime, the bill would impose a state-mandated local program.

(6) Existing law requires the owner or operator of a large passenger vessel, as defined, or an oceangoing ship, as defined, that releases specified substances into the marine waters of the state, as defined, or a marine sanctuary, as defined, to immediately, but no later than 24 hours after the release, notify the State Water Resources Control Board of the release.

This bill, instead, would require the owner or operator to notify the Office of Emergency Services immediately, but not longer than 30 minutes, after discovery of a release of one of those specified substances. The bill would require the Office of Emergency Services to transmit the notification to the board and the Department of Fish and Game immediately, but not longer than 30 minutes, after receiving the notification.

(7) This bill would make other technical, nonsubstantive changes related to the release of sewage, as defined, and sewage sludge, as defined, in the marine waters of the state and marine sanctuaries.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 71204.7 of the Public Resources Code
2 is amended to read:
3 71204.7. (a) On or before July 1, 2005, the commission, in
4 consultation with the United States Coast Guard, shall adopt
5 regulations governing the evaluation and approval of shipboard
6 experimental ballast water treatment systems.
7 (b) The regulations shall include criteria for the development
8 of a formal application package to use those systems.
9 (c) (1) If an owner or operator of a vessel applies to install an
10 experimental ballast water treatment system, and the commission
11 approves that application on or before January 1, 2008, the
12 commission shall deem the system to be in compliance with any
13 future treatment standard adopted, for a period not to exceed five
14 years from the date that the interim performance standards
15 adopted pursuant to ~~subdivisions (a) and (b)~~ *paragraphs (1) and*
16 *(2) of subdivision (a)* of Section 71205.3 would apply to that
17 vessel.

1 (2) The commission may rescind its approval of the system at
2 any time if the commission, in consultation with the board and
3 the United States Coast Guard, and after an opportunity for
4 administrative appeal with the executive officer of the
5 commission, determines that the system has not been operated in
6 accordance with conditions in the agreed upon application
7 package, or that there exists a serious deficiency in performance,
8 human safety, or environmental soundness relative to anticipated
9 performance, or that the applicant has failed to provide the
10 commission with required test results and evaluations.

11 (d) The commission shall not approve an experimental ballast
12 water treatment system unless the owner or operator
13 demonstrates that the system has significant potential to improve
14 upon the ability of existing systems to kill, inactivate, or
15 otherwise remove nonindigenous species from ballast water.

16 (e) The commission shall disseminate to the public the test
17 results and evaluations regarding experimental ballast water
18 treatment systems described in this section.

19 SEC. 2. Section 71205.3 is added to the Public Resources
20 Code, to read:

21 71205.3. (a) On or before January 1, 2008, the commission
22 shall adopt regulations that do all of the following:

23 ~~(a)~~

24 (1) Except as provided otherwise in Section 71204.7, require
25 an owner or operator of a vessel carrying, or capable of carrying,
26 ballast water that operates in the waters of the state to implement
27 the interim performance standards for the discharge of ballast
28 water recommended in accordance with Table x-1 of the
29 California State Lands Commission Report on Performance
30 Standards for Ballast Water Discharges in California Waters, as
31 approved by the commission on January 26, 2006.

32 ~~(b)~~

33 (2) Except as provided otherwise in Section 71204.7, require
34 an owner or operator of a vessel carrying, or capable of carrying,
35 ballast water that operates in the waters of the state to comply
36 with the implementation schedule for the interim performance
37 standards for the discharge of ballast water in accordance with
38 Table x-2 of the California State Lands Commission Report on
39 Performance Standards for Ballast Water Discharges in

1 California Waters, as approved by the commission on January
2 26, 2006.

3 (e)

4 (3) Notwithstanding Section 71204.7, require an owner or
5 operator of a vessel carrying, or capable of carrying, ballast water
6 that operates in the waters of the state to meet the final
7 performance standard for the discharge of ballast water of zero
8 detectable for all organism size classes by 2020, as approved by
9 the commission on January 26, 2006.

10 (b) *On or before January 1, 2008, for the interim performance*
11 *standards specified in paragraph (1) of subdivision (a), and not*
12 *less than 18 months prior to implementation of each of the*
13 *interim performance standards specified in paragraph (2) and*
14 *implementation of the final performance standard specified in*
15 *paragraph (3), of subdivision (a), the commission, in*
16 *consultation with the State Water Resources Control Board, the*
17 *United States Coast Guard, and the advisory panel described in*
18 *subdivision (b) of Section 71204.9, shall prepare and submit to*
19 *the Legislature a review of the efficacy of currently available*
20 *technologies for ballast water treatments systems.*

21 SEC. 3. Section 71207 of the Public Resources Code is
22 amended to read:

23 71207. (a) This division describes the state program to
24 regulate the discharge or release of ballast water and other
25 vectors of nonindigenous species from vessels regulated pursuant
26 to this division. Prior to January 1, 2010, a state agency, board,
27 commission, or department shall not impose a requirement,
28 pertaining to the discharge or release of ballast water and other
29 vectors of nonindigenous species from a vessel regulated
30 pursuant to this division, that is different from the requirements
31 set forth in this division, unless that action is made pursuant to
32 federal law.

33 (b) Nothing in this division restricts a state agency from
34 enforcing this division.

35 (c) A person who violates this division is subject to civil and
36 criminal liability in accordance with Chapter 5 (commencing
37 with Section 71216).

38 (d) The commission may require a vessel operating in
39 violation of this division to depart the waters of the state and
40 exchange, treat, or otherwise manage the ballast water at a

1 location determined by the commission, unless the master
2 determines that the departure or exchange would threaten the
3 safety or stability of the vessel, its crew, or its passengers.

4 SEC. 4. Section 71211 of the Public Resources Code is
5 amended to read:

6 71211. (a) (1) The Department of Fish and Game, in
7 consultation with the commission and the United States Coast
8 Guard, shall collect data necessary to establish and maintain an
9 inventory of the location and geographic range of nonindigenous
10 species populations in the coastal and estuarine waters of the
11 state that includes open coastal waters and bays and estuaries. In
12 particular, data shall be collected that does both of the following:

13 (A) Supplements the existing baseline of nonindigenous
14 species previously developed pursuant to this section, by adding
15 data from investigations of intertidal and nearshore subtidal
16 habitats along the open coast.

17 (B) Monitors the coastal and estuarine waters of the state,
18 including, but not limited to, habitats along the open coast, for
19 new introductions of nonindigenous species or spread of existing
20 nonindigenous species populations.

21 (2) Whenever possible, the study shall utilize appropriate,
22 existing data, including data from previous studies made pursuant
23 to this section. The Department of Fish and Game shall make the
24 inventory and accompanying analysis available to the public
25 through the Internet on or before January 1, 2007, and annually
26 shall provide to the public an update of that inventory.

27 (b) (1) The Department of Fish and Game, in consultation
28 with the commission and the United States Coast Guard, shall
29 assess the effectiveness of the ballast water controls implemented
30 pursuant to this division by comparing the status and
31 establishment of nonindigenous species populations, as
32 determined from the data collected pursuant to subdivision (a),
33 with the baseline data collected pursuant to this division and
34 submitted in a report to the Legislature in 2003.

35 (2) Whenever possible, this research shall utilize appropriate,
36 existing data.

37 (3) The Department of Fish and Game shall submit a report
38 presenting its assessment to the Legislature and the public on or
39 before January 1, 2009, and every three years thereafter.

(c) Information generated by the research conducted pursuant to this section shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

- (1) The determination of alternative discharge zones.
- (2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.
- (3) The long-term effectiveness of discharge control measures.
- (4) The determination of potential risk zones where uptake or discharge of ballast water shall be prohibited.
- (5) The rate and risk of establishment of nonindigenous species in the coastal waters of the state, and resulting impacts.

SEC. 5. Section 71211.5 is added to the Public Resources Code, to read:

71211.5. The Department of Fish and Game shall convene a scientific review panel to evaluate the effectiveness of, and make recommendations for, the biological monitoring and research activities described in subdivisions (a) and (b) of Section 71211. The Department of Fish and Game, upon appropriation, may utilize money from the Marine Invasive Species Control Fund to implement this section.

SEC. 6. Section 71216 of the Public Resources Code is amended to read:

71216. (a) Except as provided in subdivision (b) or (c), a person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) A person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) A person who, knowingly and with intent to deceive, falsifies a ballast water control report form, or knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by this division, may be liable for an administrative civil penalty in an

1 amount that shall not exceed twenty-seven thousand five hundred
2 dollars (\$27,500) per violation. Each day of a continuing
3 violation constitutes a separate violation.

4 (d) The executive officer of the commission may issue a
5 complaint to a person on whom civil liability may be imposed
6 pursuant to this division. The complaint shall allege the facts or
7 failures to act that constitute a basis for liability and the amount
8 of the proposed civil liability. The complaint shall be served by
9 personal service or certified mail and shall inform the person
10 served of the right to a hearing. A person served with a complaint
11 pursuant to this subdivision may, within 30 days after service of
12 the complaint, request a hearing by filing with the executive
13 officer a notice of defense, as described in Section 11506 of the
14 Government Code. A notice of defense is deemed to be filed
15 within the 30-day period if it is postmarked within the 30-day
16 period. If a hearing is requested by the person, it shall be
17 conducted within 30 days after the executive officer receives the
18 notice of defense. If no notice of defense is filed within 30 days
19 after service of the complaint, the executive officer shall issue an
20 order setting liability in the amount proposed in the complaint
21 unless the executive officer and the person have entered into a
22 settlement agreement, in which case the executive officer shall
23 issue an order setting liability in the amount specified in the
24 settlement agreement. If the person has not filed a notice of
25 defense or if the executive officer and the person have entered
26 into a settlement agreement, the order shall not be subject to
27 review by a court or agency.

28 (e) A hearing required pursuant to this section shall be
29 conducted by an independent hearing officer, in accordance with
30 the procedures specified in Chapter 5 (commencing with Section
31 11500) of Part 1 of Division 3 of Title 2 of the Government
32 Code, except as otherwise specified in this section. In making a
33 determination, the hearing officer shall take into consideration
34 the nature, circumstances, extent, and gravity of the violation, the
35 violator's past and present efforts to prevent, abate, or clean up
36 conditions posing a threat to the public health and safety of the
37 environment, and the violator's ability to pay the proposed civil
38 penalty. After conducting a hearing required pursuant to this
39 section, the hearing officer shall, within 30 days after the case is

submitted, issue a decision, including an order setting the amount, if any, of the civil penalty to be imposed.

(f) An order setting civil liability and issued pursuant to this section is effective and final upon issuance. The violator shall pay any penalty within 30 days of service, unless he or she seeks judicial review pursuant to subdivision (g), in which case he or she shall pay any penalty within 30 days of service of the court's order setting civil liability. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer that the person served is liable for a civil penalty, a person so served may file a petition for writ of mandate for review of the decision pursuant to Section 11523 of the Government Code. A person who fails to file the petition within the 30-day period shall not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern a proceeding conducted pursuant to this subdivision. In a proceeding pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) An order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing date of the complaint as specified in subdivision (d).

(i) A provision of this chapter or a ruling of the executive officer shall not be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the executive officer, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil and criminal penalties against a person who violates this division.

(j) In lieu of a complaint pursuant to subdivision (d) to impose administrative civil penalties set forth in subdivisions (a), (b), and (c), the Attorney General, at the request of the commission, may bring an action in superior court, in the name of the people of the State of California, to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil penalties in the amounts set forth in subdivisions (a), (b), and (c).

SEC. 7. Section 71271 of the Public Resources Code is amended to read:

71271. If a federal program and regulations similar to the program and regulations developed pursuant to this division are established and implemented, the commission shall submit a report to the Legislature within eight months of the implementation of the federal program. The report shall compare the federal program with the program described in this division and make a finding as to the federal program's relative effectiveness in preventing the introduction of marine invasive species from vessels visiting California. The commission shall recommend repeal of the program described in this division only if it finds that the federal program is equally or more effective at implementing and funding effective controls on the release of aquatic invasive species into the waters of the state than the program described in this division.

SEC. 8. Section 72421 of the Public Resources Code is amended to read:

72421. (a) The owner or operator shall notify the Office of Emergency Services immediately, but not longer than 30 minutes, after discovery of any of the following:

(1) A large passenger vessel release of graywater into the marine waters of the state.

(2) Until January 1, 2010, a large passenger vessel release of sewage into the marine waters of the state or a marine sanctuary.

(3) A large passenger vessel or oceangoing ship release of hazardous waste, other waste, sewage sludge, or oily bilgewater into the marine waters of the state or a marine sanctuary.

(4) An oceangoing ship with sufficient holding tank capacity release of sewage or graywater into the marine waters of the state or a marine sanctuary.

(b) The owner or operator shall include all of the following in the notification required pursuant to subdivision (a):

- (1) Date of the release.
- (2) Time of the release.
- (3) Location, by latitude and longitude, of the release.
- (4) Volume of the release.
- (5) Source of the release.
- (6) Remedial action taken to prevent future releases.

(c) The Office of Emergency Services shall transmit the notification required by subdivision (a) to the board and the Department of Fish and Game immediately, but not longer than 30 minutes, after receiving the notification.

SEC. 9. Section 72423 of the Public Resources Code is amended to read:

72423. An oceangoing ship with sufficient holding tank capacity and capability for transfer shall either hold on board or shall transfer sewage and graywater to a pumpout facility, if that facility is available and accessible for the oceangoing ship where the ship is docked, and shall not discharge sewage or graywater within the marine waters of the state.

SEC. 10. Section 72440 of the Public Resources Code, as amended by Section 21 of Chapter 588 of the Statutes of 2005, is amended to read:

72440. (a) (1) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage or sewage sludge from large passenger vessels, sewage from oceangoing ships with sufficient holding tank capacity, and sewage sludge from oceangoing ships, into the marine waters of the state or to prohibit the release of sewage sludge from large passenger vessels and oceangoing ships into marine sanctuaries, as described in Section 72420 and subdivision (a) of Section 72420.1. If the board determines that application is necessary for either sewage or sewage sludge, or both, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage or sewage sludge, or both, as necessary, from large passenger vessels, sewage from oceangoing ships with sufficient holding tank capacity, and sewage sludge from oceangoing ships, into the marine waters of the state and, if necessary, to authorize the state to prohibit the release of sewage

1 sludge from large passenger vessels and oceangoing ships into
2 marine sanctuaries.

3 (2) It is not the Legislature's intent to establish for the marine
4 waters of the state a no discharge zone for sewage from all
5 vessels, but only for a class of vessels.

6 (b) The board shall request the appropriate federal agencies, as
7 determined by the board, to prohibit the release of sewage sludge
8 and oily bilgewater, except under the circumstances specified in
9 Section 72441, by large passenger vessels and oceangoing ships,
10 in all of the waters that are in the Channel Islands National
11 Marine Sanctuary, Cordell Bank National Marine Sanctuary,
12 Gulf of the Farallones National Marine Sanctuary, and Monterey
13 Bay National Marine Sanctuary, that are not in the state waters.

14 (c) This section shall remain in effect only until January 1,
15 2010, and as of that date is repealed, unless a later enacted
16 statute, that is enacted before January 1, 2010, deletes or extends
17 that date.

18 SEC. 11. Section 44008 of the Revenue and Taxation Code is
19 repealed.

20 SEC. 12. No reimbursement is required by this act pursuant
21 to Section 6 of Article XIII B of the California Constitution
22 because the only costs that may be incurred by a local agency or
23 school district will be incurred because this act creates a new
24 crime or infraction, eliminates a crime or infraction, or changes
25 the penalty for a crime or infraction, within the meaning of
26 Section 17556 of the Government Code, or changes the
27 definition of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.

29 SEC. 13. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety
31 within the meaning of Article IV of the Constitution and shall go
32 into immediate effect. The facts constituting the necessity are:

33 In order to ensure that the marine waters of the state are safe
34 for public use, and free of contaminants, it is necessary that this
35 act take effect immediately.